The main ground upon which the appeal is based is that the prosecution evidence disclosed a *prima facie* case against the accused under section 9(1) (b) of the Ordinance of refusing, except with the permission of the Price Controller, to sell goods in reasonable quantities in the ordinary way of business. The learned Magistrate in his additional grounds of decision stated that before discharging the accused he considered whether the accused could be convicted under section 9(1) (b) and decided that the accused could not be so convicted in the absence of information whether the accused had not obtained permission from the Price Controller.

In this view I think the learned Magistrate was right. I think that before the accused could properly be convicted under section 9(1) (b) he would have to be given an opportunity of dealing with the question of whether he had permission of the Price Controller or not — a point in regard to which, under section 105 of the Evidence Ordinance, the burden of proof would be upon him.

Had the matter been considered at the close of the case for the prosecution the accused could then have been called upon for his defence under section 9(1) (b), although he had not been charged under this paragraph, and if thereafter his evidence did not raise a reasonable doubt in the mind of the Magistrate as to his guilt he could have been convicted.

The learned Deputy Public Prosecutor argued before me that it was the duty of the Magistrate to consider whether the evidence showed that the accused committed some offence other than that with which he was charged. Whilst I think this is to some extent true, particularly in cases where the actual offence disclosed by the evidence is obvious, I think the main obligation is upon the prosecution to draw the attention of the Magistrate to the possibility of convicting for a different offence. On this point I desire to quote from the judgment in the case of *Public Prosecutor v. Heng You Nang*[1]. The relevant passage is as follows :—

"I doubt whether section 158 imposes any duty upon a Court to alter or amend the charge. I think, rather, that it is for the prosecution to apply to the Court to exercise its power under that section. Under section 173(h), Subordinate Courts have a duty to consider the charge and amend it if necessary. Nevertheless I do not think that this section makes it incumbent on the Court to search the law for offences which an accused person may have committed. It is for the prosecution to decide what their real complaint against the accused is and to frame their charges or to submit amendments accordingly. No doubt, in a clear case, a President or a Magistrate ought to alter a charge to fit the proved facts; but if the prosecution is unable to reach a conclusion as to the proper charge, which appears to have been the position in this case, it is in my view quite improper to criticise the President for failing to carry out the functions of the prosecuting officer."

It was suggested that the Magistrate's duty is to enforce law and order and to see that an offender who has clearly committed an offence is punished. Whilst I respectfully agree with the recent *dictum* of the Lord Chief Justice that it should not be supposed that "interests of justice" necessarily means the interests of the prisoner, I desire to point out that in my opinion the duty of a Magistrate is to hold the scales evenly between the interests of the prosecution on the one hand and the interests of the accused on the other.

It has frequently been laid down that where the prosecution have failed to obtain a conviction through some defect in their conduct of a case they should not be given a second opportunity by the granting of a retrial. In the present case, however, the point regarding the permission of the Price Controller does not appear to have arisen until the notice of appeal was given and in all the circumstances I thought that this was a case where, in the interests of justice, a retrial should take place. I therefore ordered that the respondent be retried by another Magistrate on a charge under section 9(1) (b) of the Price Control Ordinance, 1946, as modified by the Emergency (Price Control) (Amendment) Regulations, 1949.

Retrial ordered.

A. K. S. OTHMAN GHANY v. REX*.

[C.C.A. (Sir Charles Murray-Aynsley, C.J. (Singapore), Abbott, Ag. C.J. (F.M.) and Brown, J.) October 24, 1951]

[Singapore — Criminal Appeal No. 11 of 1951]

Criminal procedure — Court of Criminal Appeal — Functions of — Court of Criminal Appeal Ordinance, s. 6 — Questions of fact.

The general rule in criminal and civil matters is that if a jury after a correct direction makes a finding and there is evidence to support that finding, then it cannot be challenged. Whether the Judge agrees or not is strictly immaterial.

By section 6 of the Court of Criminal Appeal Ordinance the powers of the Court are strictly limited. The Court has no power to substitute its own verdict where it disagrees with the verdict of the jury.

Cases referred to :—

(1) *R. v. Perfect* 12 Cr. App. R. 273, approved.
(2) *R. v. Wallace* 23 Cr. App. R. 32.
(3) *R. v. Barnes* 28 Cr. App. R. 141.
(4) *R. v. Millichamp* 16 Cr. App. R. 83.
(5) *R. v. Hitchcock* 19 Cr. App. R. 181.
(6) *R. v. Finch* 12 Cr. App. R. 77.

* Leave to appeal to the Judicial Committee of the Privy Council has been refused. — *Ed. M.L.J.*

COURT OF CRIMINAL APPEAL.

K. A. Seth, F. R. N. H. Massey and *D. S. Marshall* for the appellant.

A. D. Farrell (Crown Counsel) for the Crown.

Cur. Adv. Vult.

The judgment of the Court was delivered by:

Sir Charles Murray-Aynsley, C.J. : — In this case the appellant was convicted of murder and sentenced to death. He appeals against conviction.

The appellant was charged with the murder of one Peter Hugh Bell during the riots last December. That the deceased was murdered at that time does not admit of doubt. The sole issue was the identity of the appellant as the murderer. Substantially the case for the Crown depended on one Coomarasamy. Unless the jury were satisfied with his evidence there could be no question of a conviction.

Coomarasamy was cross-examined at great length at the trial, and was undoubtedly in many respects an unsatisfactory witness. In spite of this the jury, after a long consideration, brought in an unanimous verdict of guilty. The learned Judge who presided at the trial has not expressed any disagreement with the verdict.

In the grounds of appeal three kinds of objection were taken to the conviction. One, that evidence was wrongly admitted, was abandoned at the outset. Certain objections were taken to the summing up. These were matters of commission and omission. Unless it was the duty of the Judge to treat the witness Coomarasamy as an accomplice it is impossible to say that any matter of substance was omitted from the summing up. This was clearly not the case. In our opinion counsel was unable to point to any misdirection in what was, admittedly, a very fair and careful summing up.

The appeal, therefore, substantially, depended on the first ground in the supplementary grounds of appeal: that the verdict of the jury could not be supported by the evidence, that it was unreasonable, that it was unsatisfactory.

It was not suggested that the fact that there was only one witness to identify the appellant was necessarily fatal; since the witness Coomarasamy was quite positive that he had seen the appellant commit the crime and as he had ample opportunity to identify the appellant, it does not appear that it can be said that the verdict cannot be supported by the evidence. Really it seems to us that the appellant had to show that the verdict was unreasonable. If it was not unreasonable there does not appear to be any ground for saying that it was unsatisfactory.

The question of whether the verdict was reasonable depends on the evidence of Coomarasamy. It is not denied that he was a bad witness. We consider that apart from the usual attacks on inaccuracy in matters of detail there are three very substantial objections to his evidence. There was admittedly a very serious delay in giving information; he was untruthful in giving an account of termination of his employment in the Government service; he invented a reason to explain his presence at the scene of the crime. We think it should be noted that the objectionable features in his evidence do not logically disprove his testimony on the main issue of the trial. They merely show that he was an untruthful person. That witnesses are often persons of an infamous character is regretfully true. No person, according to English law, is so infamous that he cannot be heard as a witness. In the present case the jury could have been under no illusions about the character of Coomarasamy. All that can be said against him was put to the jury in the summing up and no doubt in the address of counsel. The question is whether this Court, even if it felt doubts about the correctness of the verdict, has any power to quash the conviction. The general rule is undoubtedly, in criminal and civil matters, that if a jury after a correct direction makes a finding and there is evidence to support that finding, then it cannot be challenged. Whether the Judge agrees or not is strictly immaterial. In this Colony the law is the same as in England, and the relevant section of the Court of Criminal Appeal Ordinance is identical with the corresponding section of the Criminal Appeal Act, 1907.

By that section the powers of the Court are strictly limited. The Court has no power to substitute its own verdict where it disagrees with the verdict of the jury. The general position is well set out in *R. v. Perfect*[1]. The decision of a very strong Court was delivered by Lord Reading (at p. 274) and is worth setting out in full:—

"This appeal comes before us on the certificate of the Judge who presided at the trial of the appellant, and it has been urged that there has been a miscarriage of justice, and that the verdict is so unreasonable that it should not stand. We cannot agree. Counsel for the appellant does not allege, and cannot allege, that there has been any misdirection of the jury; that any evidence was wrongly admitted; or that there was no evidence on which the jury could convict the appellant. The summing up was in fact very favourable to the accused. It is obvious that the Judge wished the jury to acquit her. The questions in issue at the trial were purely questions of fact, and were, therefore, for the determination of the jury, and not for that of the Judge. Unless we, sitting in this Court, are prepared to say that when a Judge differs from a jury on a finding of fact, we ought to conclude that the verdict is unreasonable, or that there has been a miscarriage of justice, we cannot quash this conviction. Substantially, the only evidence given was that of the prosecutor and that of the appellant. It was for the jury to say which they believed, and to decide accordingly, bearing in mind that a doubtful case must

result in a verdict of acquittal. In these circumstances it seems to us that we must accept the decision of the jury on the facts, and that we are not in a position to quash this conviction, unless we substitute ourselves as a tribunal of fact when we do not have, as had the jury, the opportunity of hearing and seeing the witnesses. Therefore, this appeal must be dismissed. I think that I ought to add that it is obvious from the wording of his certificate that Mr. Justice Horridge took the same view of the functions of this Court as we have expressed."

It should be noted that that is in one respect a much stronger case than the present one, because a very able and experienced Judge, Horridge, J., had expressed an emphatic disapproval of the verdict. That is a feature which is lacking in the present case. Certain cases were cited to us in which the verdict of the jury was set aside by the Court of Criminal Appeal. I think that they can all be explained. The first of these is the well known case of *R. v. Wallace*[2] That was a case which depended on circumstantial evidence and it appears that the evidence, such as it was, was equally consistent with innocence. So, in effect, there was no case to go to the jury and a submission should have been successful. In *R. v. Barnes*[3], it appears that there was no satisfactory evidence that any offence had been committed. It also appears that the jury may have been deceived as to the character of the principal witness for the prosecution and that there were other features which made the trial "unsatisfactory". It appears that the trial Judge disagreed with the verdict. In *R. v. Millichamp*[4], it appears that the case depended on proof of identity and the evidence of identity was so slight as to be more or less worthless. *R. v. Hitchcock*[5], is very scantily reported and it is difficult to extract the *ratio decidendi*. It appears to be based, like the preceding one, on absence of proper evidence of identification. In *R. v. Finch*[6], the summing appears to have been defective.

After an examination of the authorities we have come to the conclusion that if we were to quash the conviction we would be going beyond the authority of decided cases and we would be arrogating to ourselves powers which the Ordinance has not conferred upon us. The appeal must be dismissed.

Appeal dismissed.

VIVIAN IGNATIUS EVAN WONG
v.
D. M. LAUDER & ANOR.

[Orig. Civ. Juris. (Sir Charles Murray-Aynsley, C.J.) March 13, 1952]

[Singapore — Suit No. 583 of 1951]

Landlord and tenant — Claim for possession and mesne profits — Defence of "possession".

Originally, this was a claim for possession and mesne profits. Before the hearing of the case, the defendants left the premises and the only matter in dispute was whether the plaintiff was entitled to single or double rent for the period from August 1st to October 31st, 1951 the date when the defendants left. According to the correspondence the arrangement was made by the parties verbally at an interview in the plaintiff's office in July 1950. On January 10, 1951 the plaintiff wrote to the 2nd defendant setting out the terms and to this version the 2nd defendant did not demur. The terms were as follows:—

"My people are now in Singapore but as I agreed to let you have the house for a year, I shall have to make other arrangements until the end of July. If you can manage to get a place before then, I shall, of course, be very pleased but in any event, I hope you can manage to remove by the end of July."

Held that the agreement was for one year ending on July 31, 1951. The fact that the house was not ready for occupation on August 1st is not material. The 2nd defendant is therefore liable for double rent. The 1st defendant is not concerned.

Case referred to:—

(1) *Kisch v. Hawes* (1935) Ch. 102.

CIVIL SUIT.

J. L. P. Harris for the plaintiff.

D. S. Marshall for the defendants.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J. : — This was originally a claim for possession and mesne profits. Now, as the defendants have left the premises, the only matter in dispute is whether the plaintiff is entitled to single or double rent for the period from Augusst 1st to Ocotober 31st, 1951, the date when the defendants left.

To begin with there was some confusion as to which of the defendants was the tenant. The writ was issued against the first defendant. The second defendant was added later. It now seems clear that the second defendant was the tenant. Both occupied the house until they left.

The second defendant filed a defence on September 21st last in the following terms:—

1. The 2nd defendant denies that the plaintiff is entitled to possession of the premises known as No. 10, Cotswold Close, Braddell Height Estate, Braddell Road, Singapore, or to mesne profits.

2. The tenancy of the 2nd defendant has at no time been lawfully determined.

3. The 2nd defendant is in possession of the premises referred to in the Statement of Claim.

On this the plaintiff, relying on *Kisch v. Hawes*[1], claimed that the delivery of the defence constituted a forfeiture. It should be noted that in that case the only defence was possession, under Order 21 r. 21, as it then was in England. Seeing the wording of the rule, which corresponds to our Order 22 r. 19, this decision was certainly hard on the tenant. But in the present case there was also a plea that the term had not been determined. If one looks at the form given in Appendix D, section 7 of the *White Book*, a defence is